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**PETITION OF THE TENNESSEE SMALL LOCAL
EXCHANGE COMPANY COALITION FOR
TEMPORARY SUSPENSION OF 47 U.S.C. § 251(b)
AND 251(c) PURSUANT TO 47 U.S.C. § 251(f) AND
47 U.S.C. § 253(b)**

POSTED
3-23-00

Pre-Hearing Officer for the purpose of establishing issues and otherwise preparing this matter for consideration by the Directors.

Pursuant to a Notice dated December 6, 1999, a Pre-Hearing Conference was held on December 16, 1999 for the purposes of framing the issues and setting a schedule for the filing of discovery and testimony in this matter. On February 8, 2000, the Pre-Hearing Officer filed a Report and Recommendation reflecting the activity at that Conference. Objections to that Report and Recommendation were filed by AT&T on February 11, 2000. The Directors of the Authority considered the Report and Recommendation at a regularly scheduled Authority Conference held on February 15, 2000. By a vote of two to one, the Directors approved the Report and accepted the recommendations contained therein as to the procedural schedule as well as the filing of briefs on the issue of consolidation of this proceeding with Docket No. 00-00026. The Directors further determined that the Pre-Hearing Officer should take further action to resolve the objections filed by AT&T.

In addition to its objections to the Report and Recommendation, AT&T filed objections to the Petitioner's discovery requests. On February 10, 2000, SECCA, US LEC, and Hyperion also filed objections to those discovery requests. The Pre-Hearing Officer stated when presenting the Report and Recommendation to the Directors that he would rule on the objections to discovery after the Petitioner had an opportunity to respond to the Intervenor's objections. On March 2, 2000, the Petitioner filed a Motion to Compel Responses to Discovery Request. AT&T filed a Reply to the Motion to Compel on March 8, 2000. SECCA, US LEC and Hyperion filed their Reply to the Motion to Compel on March 10, 2000. This matter was then noticed on March 13, 2000 for a second Pre-Hearing Conference.

Pre-Hearing Conference

Pursuant to the Notice of March 13, 2000, a second Pre-Hearing Conference was held on March 17, 2000 for the purposes of considering: (1) the Intervenor's Objections to Discovery Requests and the Petitioner's Motion to Compel Discovery; (2) AT&T's Objections to the Pre-Hearing Officer's first Report and Recommendation; (3) the issue of consolidation of this proceeding with Docket No 00-00026 (US LEC's Request for Interconnection); and (4) the Petitioner's proposed Protective Order.

Parties in Attendance

Attending the March 17, 2000 Pre-Hearing Conference were the following parties:

Tennessee Small Local Exchange Company Coalition (the "Coalition") – **Dale Grimes**, Esquire, and **Tara L. Swafford**, Esquire, Bass, Berry & Sims PLC, 2700 First American Center, Nashville, TN 37238;

US LEC of Tennessee, Inc. ("US LEC"), Hyperion of Tennessee, L.P. ("Hyperion"), Southeastern Competitive Carriers Association ("SECCA") – **Henry Walker**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

AT&T Communications of the South Central States ("AT&T") – **Val Sanford**, Esquire, Gullet, Sanford, Robinson & Martin, PLLC, 230 Fourth Avenue North, 3rd Floor, P.O. Box 198888, Nashville, TN 37219-8888.

Matters for Consideration

The following matters were considered during the Pre-Hearing Conference. The parties presented oral comments to supplement their filings regarding these matters.

1. Intervenor's Discovery Objections and Petitioner's Motion to Compel

On January 31, 2000, the Petitioner propounded discovery requests to the Intervenor in accordance with the procedural schedule. On February 10, 2000, SECCA filed an objection to the discovery requests asserting that it is a trade association whose members are competing local exchange carriers and that, as such, it should not be required to respond to

discovery requests that “seek information, not from SECCA as an organization, but from SECCA’s individual members.” (*Objections of SECCA*, p. 1.) Hyperion and US LEC also filed objections on February 10, 2000, stating that the Petitioner’s discovery requests, which seek information about the Intervenor’s plans for interconnection, are not relevant to this proceeding because Section 251(f) of the Act requires the Petitioner to establish that its members are entitled to a suspension without reference to specific information about potential competition. On February 11, 2000, AT&T filed specific objections to each discovery request of the Petitioner, asserting that the requests are not relevant to any issue properly before the Authority pursuant to Section 253(b) of the Act or under the policies that govern universal service. AT&T objected further to specific requests stating that such requests did not seek existing information but instead required AT&T to create “work-product to serve the purposes of the Petitioners.” (*Response of AT&T to Petitioner’s Request*, pp. 7 and 8.) In its Motion to Compel Responses to Discovery Request[s] filed on March 2, 2000, the Petitioner asserted that the Intervenor’s objections are based on an assumption that “the analysis to determine the outcome of this case will presume that ‘cream skimming’¹ will occur; and, thus, any information from the Intervenor’s about their plans or track record in this regard is unnecessary or irrelevant.” (*Petitioner’s Motion to Compel*, p. 1.)

At the Pre-Hearing Conference held on December 16, 1999, the parties agreed that the Pre-Hearing Officer would be the final decision-maker relative to discovery disputes in this proceeding.² During consideration of the discovery matters at the Pre-Hearing Conference held on March 17, 2000, the counsel for the Petitioner produced a proposed

¹ “Cream skimming” is a term that has been used by the Petitioner and the Intervenor’s in this proceeding to denote a practice whereby competing carriers who are seeking entry into an incumbent carrier’s territory target that incumbent carrier’s most lucrative customers.

² This agreement is reflected in the Pre-Hearing Officer’s first Report and Recommendation at page 7.

Stipulation of Fact and stated that, if the parties could agree to that Stipulation the Petitioner could withdraw its pending discovery requests. Attorneys for the Intervenors stated that they had not had the opportunity to review the proposed stipulation with their respective clients but would proceed to do so. Counsel for both AT&T and the other Intervenors expressed some concern regarding specific language in the proposed stipulation. Nonetheless, all parties agreed to suspend further consideration of the Intervenors' discovery objections and the Petitioner's motion to compel pending consideration of the proposed Stipulation. In the event that the parties enter into a Stipulation, the parties will file the Stipulation with the Authority or, in the absence of a Stipulation, will notify the Pre-Hearing Officer thereof not later than 12:00 noon on Tuesday, March 28, 2000. All parties acknowledged that the pending discovery dispute will not delay their preparation of testimony and that they will proceed to file their pre-filed testimony in accordance with the procedural schedule even if the discovery dispute has not been resolved.

2. AT&T's Objections to Report and Recommendation of February 8, 2000

The Pre-Hearing Officer's first Report and Recommendation was filed on February 8, 2000. On February 11, 2000, AT&T filed an objection to that Report stating that Issue 3(b) of the List of Issues "does not include the FCC's definitive and binding interpretation of 'unduly economically burdensome' as that term is used in Section 251(f)(2)." (*Objections of AT&T*, p. 1) AT&T objected further to the Pre-Hearing Officer's articulation of a potential stipulation between the Coalition and the Intervenors as being an inaccurate statement. During consideration of the first Report and Recommendation at the Authority Conference on February 15, 2000, the Pre-Hearing Officer accepted AT&T's objections as clarifications to the Report and Recommendation. The Authority directed the Pre-Hearing Officer to

resolve the objections of AT&T, permitting other parties to address the objections to the Report, and to clarify any issue that might exist relating to the identity of the members of the Coalition. The second Pre-Hearing Conference was set in part for this purpose.

Pursuant to the Notice of December 6, 1999, each party filed a list of proposed issues for consideration at the December 16, 1999 Pre-Hearing Conference. At that Pre-Hearing Conference, the parties agreed that the Pre-Hearing Officer should evaluate the proposed issues and develop a list of issues for the disposition of this docket. AT&T requested that this docket not include any issues that do not coincide with the criteria set forth in the federal Telecommunications Act of 1996 or the Federal Communications Commission regulations. The list of issues for consideration in this docket, as developed by the Pre-Hearing Officer from the proposed lists of the parties, was incorporated in the first Report and Recommendation.

During the Pre-Hearing Conference on March 17, 2000, counsel for AT&T agreed that the objection as to the wording of Issue 3(b) could be resolved by amending Issue 3(b) to include the proposed language: “(beyond the economic burden that is typically associated with efficient competitive entry).” The Pre-Hearing Officer, without objection from any party, agreed to amend Issue 3(b) accordingly, and this is reflected in the Amended List of Issues attached to this Report and Recommendation as **Exhibit A**.

In the first Report and Recommendation, the Pre-Hearing Officer stated that the Intervenor had agreed to stipulate that “the Coalition” met the two percent (2%) requirement of Section 251(f)(2) if “the Coalition” would submit data on its members’ access lines. AT&T objected to that portion of the Report, stating, “The Coalition is not a carrier and a stipulation as to the Coalition in this regard would be meaningless.” (*Objections of AT&T*,

p. 1) During consideration of the Report and Recommendation at the February 15, 2000 Authority Conference, the Pre-Hearing Officer accepted AT&T's objection as a clarification of the statement in the Report. AT&T's objection has been further resolved by the March 8, 2000 filing of Stipulation of Fact No. 1. In that Stipulation, all of the parties agree that each member of the Coalition meets the two percent (2%) requirement set forth in 47 U.S.C. §251(f)(2) and is a rural telephone company for the purposes of 47 U.S.C. § 251(f)(1). The Stipulation also identifies each member of the Coalition to which the Stipulation applies. A copy of Stipulation of Fact No. 1 is attached hereto for reference as **Exhibit B**.

3. Issue of Consolidation of this Proceeding with Docket No. 00-00026

In the first Report and Recommendation, the Pre-Hearing Officer recommended, in light of the discussions at the December 16, 1999 Pre-Hearing Conference, that the parties file briefs on whether the US LEC request for interconnection with the TDS Telecom Companies (Docket No. 00-00026) should be consolidated with this proceeding. At that time it was noted that the two dockets involved similar issues and would require, for the most part, the same showings of facts during a hearing. The Authority approved the Pre-Hearing Officer's recommendation at the February 15, 2000 Authority Conference and on February 25, 2000, the Petitioner and US LEC filed briefs on the issue of consolidation.³ During the Pre-Hearing Conference on March 17, 2000, the parties discussed the extent to which a decision on the petition in this case would govern a decision on US LEC's request for interconnection in Docket No. 00-00026. The parties agreed that a decision in this case resulting in a suspension of the requirements for interconnection set forth Section 252 of the Act would act as a suspension of US LEC's request. During this discussion, counsel for US

³ US LEC filed its Brief in Docket No. 00-0026 on February 25, 2000. No other Intervenor in this docket filed a brief addressing the issue of consolidation.

LEC stated that a determination of the Coalition's petition in this docket would likely determine whether or not US LEC would proceed with its bona fide request in Docket No. 00-00026. Accordingly, counsel for US LEC stated that he would agree to waive the requirement set forth in Section 251(f)(1)(B) of the Act that the Authority act within 120 days after receipt of notice of US LEC's request. While the parties agreed that not all issues to be determined in this proceeding and the Docket No. 00-00026 proceeding are the same, certain issues specifically related to those companies with whom US LEC is seeking to interconnect could be resolved in this proceeding, prior to a hearing on the US LEC request. As a result of this agreement to waive the 120-day requirement for a decision in Docket No. 00-00026, the issue of consolidating this proceeding with Docket No. 00-00026 was held in abeyance.

4. The Petitioner's Proposed Protective Order.

On March 16, 2000, the Petitioner submitted a proposed protective order to the Pre-Hearing Officer for review. During the Pre-Hearing Conference on March 17, 2000, the Petitioner stated that all of the parties had executed the Order as proposed and that an executed copy would be filed with the Authority. The Pre-Hearing Officer informed the parties that he would review the text and send any suggested revisions to the Petitioner for review and for dissemination among the parties.

Summary and Recommendations

As to the matters addressed at the second Pre-Hearing Conference held on March 17, 2000, the Pre-Hearing Officer states and recommends the following:

1. At the request of the parties, the Pre-Hearing Officer has not taken action on the Intervenors' Objections to Discovery and the Petitioner's Motion to Compel, pending the

parties' decision regarding the proposed stipulation. The parties will notify the Pre-Hearing Officer of the status of such stipulation by 12:00 noon on March 28, 2000.

2. AT&T's objections to the first Report and Recommendation have been resolved by the amendment to Issue 3(b) and the filing of Stipulation of Fact No. 1. The Pre-Hearing Officer **recommends** that Issue 3(b), as amended and reflected in the Amended List of Issues attached to this Report and Recommendation as **Exhibit A**, be approved.

3. Based upon the filings and oral comments by the parties on the issue of consolidation and the agreement by counsel for US LEC to waive the 120-day requirement for action by the Authority in Docket No. 00-00026, the Pre-Hearing Officer **recommends** against consolidation of Docket No. 00-00026 with this proceeding at this time.

4. The proposed Protective Order filed by the Petitioner requires no action by the Directors of the Authority.

Richard Collier
RICHARD COLLIER ACTING AS
PRE-HEARING OFFICER

ATTEST:

KD Waddell

K. David Waddell, Executive Secretary

DATE: March 23, 2000

AMENDED LIST OF ISSUES

1. Whether each member of the Coalition qualifies as a rural telephone company as defined in 47 U.S.C. § 153(37).
2. Whether each member of the Coalition is qualified to request suspension or modification of the requirements of 47 U.S.C. § 251(b) or (c) as a rural carrier with fewer than two percent (2%) of the Nation's subscriber lines installed in the aggregate nationwide.
3. Whether each member of the Coalition can establish that suspension or modification of the requirements of 47 U.S.C. § 251(b)(1), (2), (4) and (5) and § 251(c) is necessary:
 - (a) to avoid a significant economic impact on users of telecommunication services generally;
 - (b) to avoid imposing a requirement that is unduly economically burdensome (*beyond the economic burden that is typically associated with efficient competitive entry*);¹
or
 - (c) to avoid imposing a requirement that is technically infeasible.
4. Whether each member of the Coalition can establish that suspension or modification of the requirements of 47 U.S.C. § 251(b)(1), (2), (4) and (5) and § 251(c) is consistent with the public interest, convenience and necessity.
5. Whether, during the pendency of this action, the Authority should:
 - (a) suspend enforcement of the requirements of 47 U.S.C. § 251(b)(1), (2), (4) and (5) and § 251(c), pursuant to § 251(f)(2); and

¹ Emphasis added to show amended text pursuant to agreement of the parties at the March 17, 2000 Pre-Hearing Conference.

(b) maintain the exemption established by § 251(f)(1) and suspend the effective date of any bona fide request for interconnection, services or network elements.

6. Whether a suspension or modification is necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers on a competitively neutral basis pursuant to § 253(b) and consistent with § 254 of the Act.
7. Whether the Petitioner is entitled to obtain discovery of the individual members of SECCA in this docket.

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TENN. REGULATORY AUTHORITY
BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE
JUN 8 PM 4 16

IN RE:

OFFICE OF THE
EXECUTIVE SECRETARY

PETITION OF THE TENNESSEE SMALL LOCAL)
EXCHANGE COMPANY COALITION FOR)
TEMPORARY SUSPENSION OF 47 U.S.C. §) DOCKET NO. 99-00613
251(b) AND 251(c) PURSUANT TO 47 U.S.C. §)
251(f) AND 47 U.S.C. § 253(b).)

STIPULATION OF FACT NO. 1

Petitioner Tennessee Small Local Exchange Company Coalition ("the Coalition"), and Interveners, which consist of US LEC, Southeast Competitive Carriers Association, Hyperion of Tennessee, LP, and AT&T Communications of the South Central States (collectively, "Interveners"), hereby agree to and submit the following Stipulation of Fact to the Tennessee Regulatory Authority.

a. Each of the members of the Tennessee Small Local Exchange Company Coalition qualifies as a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide for purposes of seeking suspensions and modifications under 47 U.S.C. § 251(f)(2).

b. Each of the members of the Tennessee Small Local Exchange Company Coalition is a rural telephone company as defined in 47 U.S.C. § 153(37) for purposes of 47 U.S.C. § 251(f)(1).

c. The members of the Tennessee Small Local Exchange Company Coalition to which this Stipulation applies are: (1) Ardmore Telephone Company, Inc.; (2) the Century Telephone Enterprises, Inc. Companies in Tennessee consisting

EXHIBIT B

of (a) CenturyTel of Adamsville, Inc.; (b) CenturyTel of Claiborne, Inc.; and (c) CenturyTel of Ooltewah-Collegedale, Inc.; (3) Loretto Telephone Company, Inc.; (4) Millington Telephone Company, Inc.; (5) the TDS TELECOM Companies in Tennessee consisting of (a) Concord Telephone Exchange, Inc.; (b) Humphreys County Telephone Company; (c) Tellico Telephone Company; and (d) Tennessee Telephone Company; (6) the Telephone Electronics Corp. ("TEC") Companies in Tennessee consisting of (a) Crockett Telephone Company, Inc.; (b) Peoples Telephone Company, Inc.; and (c) West Tennessee Telephone Company, Inc.; and (7) United Telephone Company, Inc.

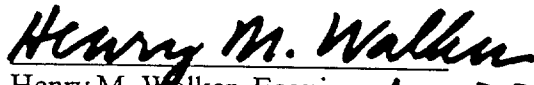
DATED: March 8, 2000.

SO STIPULATED AND
APPROVED FOR ENTRY:



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served on the following counsel of record, via the method checked, on March 8, 2000:

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